IN THE HIGH COURT OF UTTARANCHAL AT NAINTIAL

W.P.No.125 of 2001 (MB)
Old No.6493 of 1983

Vishwapal Kumar & another ……Petitioners.

Versus

The District Magistrate,
Nainital & others …….. Respondents.

Mr.Ashok Kumar Sharma, learned counsel for the petitioners.
Mr. Nand Prasad, learned Standing Counsel for respondents.

Hon'ble P.C. Verma, A.C.J.

This writ petition has been filed by the petitioners challenging the order of the Collector dated 5.5.1983, order of the Sub-Divisional Officer dated 11.5.1983 and the order of the Collector dated 10.5.1983. A further writ of mandamus has been sought for directing the respondents to grant a permanent lease to the petitioners under Section 26-A and 27 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

Heard Mr. Ashok Kumar Sharma, learned counsel for the petitioners and Mr. Nand Prasad, learned Standing Counsel for the State.

Brief facts of the case are that a plot, which originally belonged to one Sri Brij Kishore Mehrotra situated in village Dhakia, Tehsil Kashipur, District Nainital came under the proceedings under the U.P. Imposition of ceilings on Land Holdings (Amendment) Ordinance 1975 and proceedings under the aforesaid Act were started and the said plot along with other plots belonging to Sri Brij Koshore Mehrotra were declared to be surplus under Section 12 of the Act. The State Government took the possession of the said land in or about the year 1966-67. Thereafter, the aforesaid plots were allotted to the petitioners under section 26(2) of he said Act. Instead of making a permanent settlement of the said plot, the State Government under section 26(2) of the said Act read with Rule 58 of the Act, settled the

said land with the petitioners as the lessees thereof. The said settlement was done on interim and temporary basis for a period of five years by the orders of the Sub-Division Officer, Kashipur, District Nainital dated 21.3.1967 on payment of double of the circle rate with the petitioners. The leases were also renewed and the CH Form No.35 and the lease of the said land was not given to the petitioners, instead, only the allotment order was given to the petitioners. Pursuant to the said order, the petitioners were given the possession of the land in disputed and sine then, the petitioners are in possession thereof. The petitioners have been continuously paying the land revenue to the Government on the rate settled under the said lease. During the continuation of the lease, which was to expire on 30th June, 1972, the petitioners received a notice form the Sub-Divisional Officer, Kashipur desiring the petitioners to vacate the land in dispute.

This writ petition arises out of the said notice issued to the petitioners for informing them that their term of interim allotment was to expire against which, the petitioners filed a suit under Section 229-B of the U.P.Z.A.L.R. Act, which they lost and thereafter, the petitioners filed an appeal before the Commissioner, which also failed. Then, the petitioners filed a first appeal. On the failure of first appeal, petitioners filed a second appeal before the Board of Revenue. Before the Board of Revenue, petitioners withdrew the second appeal and also got the suit dismissed on 24.03.1983.

These orders impugned in the writ petition have been passed after dismissal of the suit by the Board of Revenue to take over the possession from the petitioner. In view of Section 26-A of the Act, the petitioner cannot retain the possession until and unless a fresh allotment is made either in proviso to Section 26-A or under Section 27 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960. Provisions of clauses (b) to (h) of sub-section (1) of Section 198 of the

U.P. Zamindari Abolition and Land Reforms Act, 1950 shall also be taken into account on the facts as it exists today if the fresh allotment will be made now by the Collector.

Therefore, the interim order dated 23.5.1983 is, hereby, vacated. The State Government is directed to take the possession immediately and to make a fresh allotment in favour of the petitioners in accordance with either the proviso to Section 26-A or in accordance with Section 27 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

Learned counsel for the petitioners submits that the petition may be disposed of in aforesaid terms. Therefore, the writ petition is disposed of. No order as to costs.

(P.C. Verma, A.C. J.)

Dt. 15.06.2004
G

WPMS No.125 (MB) of 2001
Old No.6493 of 1993

Hon'ble P.C. Verma, J.
(Delay Condn. Appln. No 4719/06)
(Review Appln. No.37 of 2006)

Heard learned counsel for the parties and perused the applications supported by affidavits.

We have perused the application for condonation of delay. The reasons given in the delay condonation application are satisfactory. Hence the delay in filing the review application is condoned. The reasons given in the review application are also satisfactory, hence the review application is allowed. The order dated 15.06.2004 is reviewed to the extent that while making the allotment under Section 26-A or in accordance with Section 27 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, the review petitioners shall also be considered for allotment of Pattas if they fall within the category of eligible persons.

(P.C. Verma, J.)

25-05-2006
Rajeev Dang.